first argument, counsel referred us to the present land dealings in Penang and in particular to section 11 of the National Land Code (Penang and Malacca) Order 1965 which expressly provide that Chapters 2, 3 and 4 of Part 9 of the National Land Code 1965 shall not apply in relation to land held under interim title. Chapter 2 deals with partition of lands. He goes on to point out that all lands in Penang are held under interim titles until they have become indefeasible pursuant to sections 84, 85, 87 and 89 of the National Land Code (Penang and Malacca Titles) Act 1963. Because of the said section 11 a partition to be effected in Penang has to be by way of sub-division and thereafter by way of cross-transfers, and in a cross transfer of such a nature section 4(3) of the Stamp Ordinance would apply. It was therefore argued that a partition may be effected in a manner other than as provided in Chapter 2, Part 9 of the National Land Code, and the provisions of section 4(3) of the Stamp Ordinance covers such a partition. The cross-transfers in question involving three instruments of transfers presented to the collector amount to a partition within the meaning of section 4(3) of the Stamp Ordinance. Therefore, submitted counsel, for the above reasons the memoranda of transfers were wrongly rejected by the respondent.

The other argument put forward by counsel for the appellants was that this was a case of exchange attracting stamp duty under item 43 of the First Schedule to the Stamp Ordinance. He explained it in the following manner. An exchange at common law means an assurance by which one person conveys property to another in consideration of a conveyance of property by mutual conveyance or transfer. The seven lots in question came from the original lot 87 which was registered in the names of the appellants. The land was the same and no new property was involved and there was no monetary consideration. The three instruments of transfer presented by the appellants were merely to enable themselves in their three respective groups to become co-owners of their respective lots to the exclusion of others. The learned judge below himself had accepted that this was the intention of the parties. He had therefore erred in not holding that the three instruments so presented come within the meaning of "exchange" under section 4(3) of the Stamp Ordinance 1949.

Learned counsel for the respondent argued on the other hand, that the appellants in pursuance of the partition agreement made among themselves applied for sub-division. They could have applied for a partition and if they had done so then there would be no question of stamp duty arising, because the land would have been surveyed and each party would have had a demarcated area proportionate to his or their share. In the circumstances no question of cross-transfers would have arisen. He went on to say that under the National Land Code partition is treated separately from sub-division and therefore is distinguishable. If, however, they had proceeded under the provisions dealing with partition under the Land Code the land would not have been sub-divided in the way they had done and agreed to do under the partition agreement. In a partition they had to comply with the provisions in paragraph (b) of section 141(1) which requires that in a partition the area to be vested in each co-proprietor has to be as near as may be proportionate to his undivided share in the whole.

In my view it is essential to keep in mind that we are concerned only with the question of what stamp duty is payable in this transaction.

The words "instrument of partition" are defined in the Stamp Ordinance and read as follows: —

" 'Instrument of partition' means any instrument whereby co-owners of any property divide or agree to divide such property in severalty and includes also a final order for effecting a partition passed by the High Court or made by the Collector of Land Revenue and an award by an arbitrator directing a partition."

If I understand counsel for the respondent correctly, whatever may be the definition given in the Stamp Ordinance to the word "partition", it must be interpreted in the light of the provisions of the National Land Code pertaining to it. In other words, for the purpose of this case a "partition" acceptable to the Collector of Land Revenue must be partition with all the restrictions given to it in the Code. That would mean that notwithstanding the wide meaning that could be put to the word "partition" in the Stamp Ordinance it must be interpreted subject to the provisions of the Land Code. For the purpose of this appeal it is not necessary for me to decide that question. I would, however, accept the alternative argument of the counsel for the appellants that this is a case of an exchange attracting item 43 of the First Schedule of the Stamp Ordinance and since *ad valorem* duty has been paid on the memorandum of the greater value, the other two instruments stamped with the 50 cent stamp each are therefore properly stamped.

I would therefore allow the appeal.

Gill and **Ali F.JJ.** concurred.

Appeal allowed.

Solicitors: *Presgraves & Matthews.*

LEBAI TAIB v. ABDUL GHANI & ANOR.

[F.C. (Azmi L.P., Gill and Ali F.JJ.) August 3, 1972]

[Alor Star — Federal Court Civil Appeal No. 9 of 1972]

Land — Transfer of land — Jual Janji — Whether oral agreement to retransfer land admissible — Evidence Act, sections 91 and 92.

The plaintiff in this case, the administrator of the estate of his mother, Haji Munah, brought an action for specific performance of a verbal agreement to retransfer certain lands. It was alleged that the lands were transferred by the deceased to the defendant and that at the time of transfer the defendant agreed that he would resell the lands to the deceased for the same consideration. The learned trial judge dismissed the action on the ground *inter alia* that the alleged oral agreement was inadmissible as it contravened sections 91 and 92 of the Evidence Ordinance.

Held, allowing the appeal: (1) the oral agreement in this case was admissible as it could not be held to have contradicted, varied or subtracted to or added to the terms of the registered transfers;

(2) the plaintiff had proved the existence of the alleged oral agreement and therefore the plaintiff was entitled to have the land resold to him or (where this had became impossible because of the sale of the lands) for damages.

Cases referred to:-

(1) *Tan Chow Soo* v. *Ratnam Ammal* [1969] 2 M.L.J. 49 at p. 50.

(2) *Sara Veraswami alias Sara Veerraju* v. *Talluri Narayaya deceased & Ors.* (1947-8) L.R. 75 I.A. 252.

(3) *Ridley* v. *De Greets* [1945] 2 All E.R. 654.

FEDERAL COURT.

Oo Gin Son for the appellant.

Karpal Singh for the respondents.

Azmi L.P.: The plaintiff is the administrator of the estate of his mother, Haji Munah binte Lebai Karim, deceased and brought this suit against the two defendants:

(i) For a declaration that the transfer of the three pieces of lands comprised in S.P.K. Nos. 3163, 3165 and 3166 Mukim of Padang Hang District of Kota Star by the first defendant to the second defendant under Transfer Presentation No. 298/27.2.1378 (11.9.58) Land Office, Kota Star be null and void.

(ii) That the first defendant do specifically perform the verbal agreement by transferring the said three pieces of lands comprised in S.P.K. No 3163, 3165 and 3166 Mukim of Padang Hang, Kota Star to the plaintiff as the Administrator of the Estate of Haji Munah binti Lebai Karim deceased for $600.

To appreciate fully the grounds of decision of the learned trial judge, it is in my view necessary to set out the plaintiff's statement of claim in full and the relevant paragraphs read as follows: —

"The said Haji Munah binti Lebai Karim (hereinafter referred to as the deceased) was the administratrix of the estate of Harun bin Haji Mohamed Saman deceased and as such Administratrix agreed to sell: —

(1) the piece of land comprised in S.P.K. 3163 Mukim of Padang Hang, Kota Star, Kedah;

(2) the piece of land comprised in S.P.K. 3165 Mukim of Padang Hang, Kota Star, Kedah;

(3) the piece of land comprised in S.P.K. 3166 Mukim of Padang Hang, Kota Star, Kedah, (hereinafter referred to as the three pieces of lands) to the 1st defendant at the price of $600 upon the condition that the 1st defendant should resell the said three pieces of lands to the deceased for the same consideration.

(4) The 1st defendant agreed to the said condition.

(5) It was a term of the said agreement of sale that in the meanwhile and before retransfer the deceased was to remain in occupation of the said land quatenant and pay rents therefor.

(6) Upon the said agreement being reached, the deceased on the 16th Jamdilawal 1357 corresponding to the 25th day of July, 1937 obtained an order of the High Court Division II at Land Office, Kota Star for the said sale.

(7) In pursuance of the said order, the said lands were transferred to the 1st Defendant.

(8) At all relevant times the deceased and after her death the plaintiff has remained in occupation of the said land.

(9) On the 6th October, 1956, the plaintiff obtained an acknowledgement of the aforesaid condition to resell from the 2nd defendant who at all relevant times was the duly constituted attorney of the 1st defendant.

(10) Despite such acknowledgement and in fraud of the plaintiff the 2nd defendant on the 10th September 1958 obtained a transfer of the said three pieces of lands from the 1st defendant to himself for a purported consideration of $14,000.

Particulars of Fraud

(i) Both defendants know that the said three pieces of lands were transferred to the 1st defendant subject to the agreement to re-transfer the same.

(ii) Both defendants knew that they had given the further acknowledgment in writing of 6th October, 1956.

(11) After the padi harvest of 1958, the plaintiff offered to pay back the sum of $600 and sought a re-transfer of the said lands but both the defendants refused and still so refuse."

The first defendant in his statement of defence and counter-claim, while admitting that he purchased two pieces of the land mentioned by the plaintiff for which he paid $450, denied that there was any agreement whatsoever to resell the said two pieces of land to the deceased. He also stated that he appointed the second defendant as his lawful attorney to deal with all his lands. He also admitted that on 28th March 1956 he purchased the third piece of land from a third party and that also in September 1958 sold all the three pieces to the second defendant. He counter-claimed for arrears of rent due by the plaintiff in reference to the land.

The second defendant denied knowledge of all the material alleged in the statement of claim paragraphs 3 to 8. He admitted, however, that by a power of attorney dated 17th March 1956, he was appointed attorney of the first defendant and that he wrote the notice referred to in paragraph 9 of the statement of claim (*i.e.* Exh. page 3) for the purpose of getting back the three pieces of land. In his counter claim he also claimed for recovery of possession of the land and *mesne* profits.

In reply to the defence and to the counter claim of the first and the second defendants, the plaintiff maintained that the payment of rents by his mother and subsequently by him was really payment of interest under the system of sale with the proviso for the sale money and also alleged that the whole transaction was a money-lending transaction and was therefore void by reason of the Moneylenders Ordinance.

This point, however, was abandoned at the trial and the trial proceeded on the basis whether this was a case of *jual janji*.

I will now refer to the evidence produced at the trial. In his evidence the plaintiff said that he was present during the transaction of this matter between his mother and the first defendant. He maintained that the sale to the first defendant was a conditional sale whereby the latter had to re-sell the land to his mother for the same consideration. In his examination-in-chief he stated, contrary to his pleading, that only two pieces of the land were sold to the first defendant and the third piece was sold to one Mohamed Isa, a brother of the first defendant. That was done because the first defendant had not enough money to pay for all the three pieces and was intended to be only a temporary arrangement, because all the time the intention was to sell all the three pieces to the first de-

fendant. That explained the subsequent sale by Mohd. Isa to the first defendant.

The plaintiff also alleged that he obtained an acknowledgment on 6th October, 1956 from the second defendant of the aforesaid condition to re-sell the property to his mother, namely Exh. P3, in which the second defendant demanded for the possession of the land in order to enable him to cultivate it for the seasons of 1957-1958 but with a promise to return them to the plaintiff and sell them back at the price of $600 to him or his beneficiaries after 1958.

Let me now refer to the evidence of the first defendant. He said that he bought only two pieces of the land from Haji Munah at the price of $450 but was not aware whether she made any sale to another person though 8 years later he bought a piece of land from one Mohamed Isa. He maintained that there was no agreement to resell the said land to Haji Munah but allowed Haji Munah to continue cultivating the land at the rental of 5 naleh per relong. After her death the plaintiff cultivated the land and paid rental to him for about 5 years. He, however, changed his story and admitted under cross-examination, that he was aware of the said sale of the third piece of the land to Mohamed Isa for $150 because that transaction took place on the same day he purchased the other two pieces. He however, denied that the third piece was sold to Mohamed Isa because he himself was unable to raise $600. The second defendant had been his attorney for about 3 years before he (first defendant) transferred the land to him by sale. He did not tell the second defendant of any *jual-janji* agreement with the deceased Haji Munah since there was no such agreement. He denied any knowledge of Exhibit P3.

In his evidence the second defendant said he bought the three pieces of land from the first defendant for $14,000 and had paid the price money. Subsequently, on 1st September, 1962, which incidentally was about 3 months after the writ in this case was filed, he sold the land held under S.P.K. 3163 to another person. When referred to the last part of Exhibit P3, he had first denied knowledge of it but later admitted that he wrote the document himself and not only that, but went on to say that if the plaintiff had come to negotiate with him about that matter he would be prepared to sell back the land for $600. But, however, when put to him again by the court he said this: —

"I do not know of any agreement between the first defendant with Haji Munah or plaintiff. I cannot explain why I wrote P. 3 especially the last part. I say I did not write it."

Let me now refer to the grounds of judgment of the learned trial judge.

The learned judge dismissed the plaintiff's allegation of the oral agreement on the following grounds. I quote him:

"In the first place, the plaintiff contradicts his pleadings in material particular. In the second place, the statement inserted in the assets of the deceased's property is not correct, having regard to the evidence and record.

In the circumstances, I do not consider it necessary to go into greater detail on the question of admissibility of the alleged oral agreement, it clearly contravenes sections 91 and 92 of the Evidence Ordinance as to render it inadmissible. The court order obtained by the deceased (Exh. P.2) was for liberty to sell the three pieces of land for the sum of $600 and soon after a memorandum of transfer was executed under the Kedah Land Enactment indicating an outright transfer."

He also rejected counsel's submission that P3 revived the oral agreement or that the evidence in the document disclosed a new offer to sell.

This is not a case where the trial judge decided the matter on an issue of credibility in the sense used by Lord Diplock in *Tan Chow Soo* v. *Ratna Amal*[1] and we in this court are therefore freer in reassessing the facts.

I must say in fairness to the learned trial judge that he might have come to a different decision had he been referred to the judgment of the Judicial Committee of the Privy Council in *Sara Veeraswami alias Sara Veeraju* v. *Talluri Narayya (Decd.) & Others*.[2] The issues raised for determination by the Board were two in number. They may be stated thus:

(1) Did the parties to the sale deed orally agree:

(a) that the lands sold would be reconveyed if the price of Rs. 6,000 was repaid within the period of five years; and

(b) that that period should be extended for a further three years?

(2) If so, could the appellants avail themselves of such agreement having regard to section 92 of the Indian Act, 1872?

The facts as set out in the head-note of the report reads as follows: —

"The appellant and his father (since deceased), who were in urgent need of Rs. 6,000 to save their lands from sale in execution proceedings, sold the suit properties to the respondents for Rs. 6,000, and a sale deed was executed on November 30, 1932, and registered. On the same day the respondents leased the properties to the appellant's father-in-law, and in 1937 the lease was renewed at a reduced rent for a further three years. In 1940 the appellant, alleging that when the properties were sold it was orally agreed that they should be reconveyed if the purchase price was repaid within a period of five years, which was later extended for a further three years, instituted the present suit against the respondents for specific performance of the alleged oral agreement to reconvey. The respondents contended that the only agreement concerning the properties was that manifested by the sale deed."

In their judgment their Lordships set out the provisions of section 92 of the Evidence Act and also the proviso (2).

Proviso (2) (corresponding to our proviso (b)) reads as follows: —

"The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document."

The provisions of our section 91 and proviso (b) are in *pari materia* with the India section 92 and proviso (2).

Their Lordships held that the oral agreement did not "contradict, vary or subtract from" the terms of the sale deed, within the meaning of section 92 of the Indian Evidence Act, but, on the contrary, left those terms and interest passing thereunder to the purchaser entirely unaffected and nor did it "add" to the terms of the sale deed — to add a stipulation which

was quite unconnected with the terms of the sale deed was not an addition of the kind struck at by that section.

After expressing the view that the agreement in that case, to sell and to reconvey may be taken as contemporaneous, their Lordships then went on to say this:

"Such an arrangement may, on occasion, amount to but a single transaction of the nature of a mortgage. On the other hand, it may contemplate two distinct transactions, an absolute sale followed by a re-sale in certain events. It is not always easy to discern the true intendment, but that an arrangement of this sort can constitute an agreement for an absolute sale and a subsequent re-sale without any relationship of debtor and creditor about it has long been recognized by this Board, as in *Bhagwan Sahai* v. *Bhagwan Din*, and by the courts in India. Here, if the arrangement was in truth a mortgage the appellants must fail, for in that case the oral agreement would obviously contradict the terms of the sale deed. Neither side, however, sought to establish a mortgage relationship and, apart from that consideration there is nothing to indicate that such a relationship existed at any material time between the parties, or that any agreement they made was incompatible with the plain terms of the sale deed. In their Lordships' opinion the correct way of stating the position is to say that the agreement reached covered several matters but that the intention was that each of these should be effected as a separate and independent transaction. There was to be an outright sale and that, on the happening of a certain event, was to be followed by a reconveyance of what had been sold. The second transaction, by its very nature, premised the previous completion of the first. Both, it is true, may be taken as arranged at the same time, and agreement on one part of the bargain may well have promoted agreement as to the rest, but such considerations do not necessarily affect the final result of the bargaining. The determining factor lies in the ultimate shape of the agreement rather than in the process by which it is reached. An oral stipulation may be purely collateral to the written agreement which it has induced, and that though both touch on a common subject-matter. See, for example, the well-known case of *Morgan* v. *Griffith* ((1871) L.R. 8 Ex. 70) and *Erskine* v. *Adeane* (1874) L.R. 8 Ch. 756).

Such being the character of the agreement in question their Lordships find it impossible to hold that it contradicted, varied or sub-tracted from the terms of the sale deed. On the contrary, it left those terms and the interest passing thereunder to the purchaser entirely unaffected. Can it then be said to have *added* to the terms of the sale deed? The words "adding to," which are part of s. 92, must receive their due weight, but in the opinion of their Lordships they do not suffice to exclude the oral agreement relied on by the appellants. It is, of course, literally correct to say that as the agreement for reconveyance related to the lands sold it added a further stipulation respecting those lands. That, however, is not an appropriate test of the applicability of the section which is concerned to defeat that modification of a particular document. It is not enough to ask if the oral agreement relates to what has been sold. To be excluded it must bear, in some one or more of the ways specified in the section, on the terms of sale as contained in the instrument. To add a stipulation which is quite unconnected with the terms of sale is not, in the view of their Lordships, an addition of the kind struck at by the section. On the facts none of the provisoes to the section is in point with the possible exception of the second, but on the view just expressed its precise scope ceases to be material and it becomes unnecessary to discuss it further."

Let me now turn to the case before us. On the authority of the above judgment of the Privy Council the learned judge was therefore wrong in holding that the oral agreement was inadmissible under section 92 of the Evidence Ordinance and following the reasoning of their Lordships I would also say that the agreement to sell and to reconvey should be taken as contemporaneous though there was a lapse of time before the transfers of the land were actually registered at the Land Office. In other words, I would say that the alleged oral agreement in question could not be held to have contradicted, varied or subtracted or added to the terms of the registered transfers. The next question that has to be considered is therefore whether the plaintiff had succeeded in proving the existence of the alleged oral agreement.

In my view he has. I refer particularly to Exh. P3. In my opinion this document corroborates the evidence of the plaintiff that there was such an oral agreement. In that document the second defendant who must have known the whole story from the beginning had offered as attorney of the first defendant to sell back all the three pieces of land for $600 which was the price that was sold by the plaintiff's mother. I also accept the truth of plaintiff's evidence that first defendant could afford only to buy the two pieces as he had only $450 and that the sale to Mohamed Isa was a temporary arrangement. It could not be otherwise. It was obvious the second defendant was lying in his evidence as to this document. To refer to the evidence he gave on three different occasions in the course of the trial which was obviously contradictory. When referred to the part of the document which says "and after 1958 I shall hand it back and sell it back for $600 to you and to your beneficiaries", he said "I deny this part". Later he admitted that Exh. P3 was in his hand writing and explained that he did not transfer the land to the plaintiff because the plaintiff did not come to negotiate but (I quote his own words): —

"If he had come to settle with me I would have retransferred to the plaintiff for $600 as in Exh. P. 3."

That could only mean that he did offer to sell back to the plaintiff the land at the price that plaintiff's mother sold. But he changed his story again because in answer to questions put by the court he said this:

"I cannot explain why I wrote P. 3 especially the last part. I say I did not write it."

It is therefore obvious to me that this witness was lying. In the circumstances I would hold that the first defendant had made this oral agreement with the plaintiff's mother to resell all the three pieces of land for the same price.

The second defendant in exercise of his authority as attorney of the first defendant transferred all the said three pieces of land to himself for a purported consideration of $14,000 and since the date of the writ of summons in this case sold the piece held under S.P.K. 3163 to a third person. Incidentally, there is no evidence in the record of appeal in reference to the particulars of this transaction. On the defendant's own evidence there was a clear admission of a fraudulent exercise by him to avoid the *jual-janji*. There is no doubt that the first defendant was a party to this fraud. On this ground there will be a declaration that the transfer of the said lands to the second defendant was null and void. There will also be a further order that the defendants shall sell back the lands comprised under S.P.K. 3165 and 3166 to the plaintiff as the administrator of his mother's estate on his paying the price of these two lands assessed at the time of

the oral agreement, namely, in the Muslim year 1358. There is no question of specific performance in reference to the third piece since the second defendant has sold it to another person. The question then is what is the measure of damages? In my opinion, the measure of damages should be the differences between the price that the plaintiff should pay for the land under the oral agreement and the price of the land in 1958 when the defendants repudiated the contract. (See *Ridley* v. *De Greets*[3]).

(After a short adjournment we obtained counsel's agreement that the measure of damages should be $8,000 for the loss of this land to the plaintiff).

I would therefore allow the appeal, set aside the judgment of the court below and make the following order:

1. That the defendant shall sell back the lands comprised under S.P.K. 3165 and 3166 to the plaintiff as the administrator of his mother's estate on his payment of $600.
2. That the defendant shall pay the plaintiff $8,000 as damages for the loss of land comprised in S.P.K. 3163.
3. The defendants will pay costs here and in the court below. The plaintiff's deposit of $500 will be paid back to him.

Gill and **Ali F.JJ.** concurred.

Appeal allowed.

Solicitors: *Oo Gin Sun & Co.; Karpal Singh, Wong & Co.*

LEE MOOI v. NAM SING MINING, KEPONG

[A.C.J. (Mohamed Azmi J.) August 25, 1972]

[Kuala Lumpur — Civil Appeal No. 49 of 1971]

Workmen's Compensation — Whether deceased a workman — Tests to be applied — Workmen's Compensation Ordinance, 1952, s. 2(1).

In this case the deceased, at the time of his death, was a member of a gang of twenty five workers whose duty it was to extract tin in the respondent's mine at Kepong. The terms and conditions of the service of the gang were contained in an agreement which was executed by all the twenty five workers of the one part and the respondent of the other part. The deceasd died whilst tightening up the screws of the cover to a water pump at the mine. The cause of death was heart failure. The arbitrator under the Workmen's Compensation Ordinance held that the deceased was not a workman within the meaning of the Ordinance and dismissed the claim of his widow, the appellant, for compensation. The appellant appealed to the High Court.

Held: there was very little evidence to show that the respondent had the right to exercise control over the deceased and therefore the arbitrator was right in holding that the deceased was not a workman under section 2(1) of the Ordinance.

Cases referred to:-

(1) *Bata Shoe Company (Malaya) Ltd.* v. *Employees Provident Fund Board* [1967] 1 M.L.J. 120 at p. 121.

(2) *Montreal Locomotive Works Ltd.* v. *Montreal & A. G.* [1947] 1 D.L.R. 161 at p. 169, P.C.

(3) *Zuijis* v. *Wirth Bros Pty. Ltd.* (1955) 93 C.L.R. 87.

(4) *Bobby* v. *W. M. Crosbie & Co Ltd.* (1916) 114 L.T. 244.

(5) *Tay Choon Keng* v. *Chop Choong Joo* [1953] M.L.J. 76.

CIVIL APPEAL.

Wong Chong Wah for the appellant.

K. K. Lam for the respondent.

Mohamed Azmi J.: This is an appeal against the decision of the arbitrator appointed under section 30 of the Workmen's Compensation Ordinance, 1952 wherein the arbitrator held that one Lim Chuan, deceased, the husband of the appellant, was not a 'workman' within the meaning of the Ordinance and thereby dismissed the appellant's application for compensation against the respondent.

The facts of the case are not in dispute. At the time of his death, the deceased was a member of a gang of twenty-five workers, whose duty was to extract tin in the respondent's mine at Kepong. The terms and conditions of the service of the gang are contained in an agreement written in Chinese dated May 1, 1967 which was executed by all the twenty-five workers of the one part and the respondent of the other part. The deceased died on February 11, 1968 whilst tightening up the screws of the cover to the water pump at the mine by using two spanners. The cause of death was coronary arteriosclerosis with heart failure.

There are three grounds of appeal. First, it is argued that the learned arbitrator erred in law in failing to consider the written agreement dated May 1, 1967 as a whole, and in not coming to the conclusion that upon the proper construction of the agreement there was a relationship of employer and workman between the respondent and the deceased. Secondly, the learned arbitrator erred in law in that he failed to construe the said written agreement first without inquiring into the fact situation of the case; and lastly, the learned arbitrator erred in law and fact in holding that the deceased was not a workman under section 2(1) of the Ordinance.

Taking the first two grounds together, it is convenient at this stage to refer to the terms of the agreement in Chinese. They may be tabulated as follows: —

(1) Nam Sing Mining Company opened a tin mine at Kepong.

(2) Both parties agreed to the price of $36 per hundred-weight of tin ore produced on the basis of seventy hundred-weight per 'palong' each month.

(3) The total for two 'palongs' shall be 140 hundred-weight.

(4) The management shall be responsible for all the machineries, furniture and workmen's compensation matters.

(5) Lodging but not food is provided.

(6) This agreement has been agreed by both parties and becomes valid immediately.

(7) In future, if either party has any dissatisfaction, the party concerned shall give one month's notice officially before it could be effective.